

Filed 1/31/02

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ROBERT C. et al., Persons Coming
Under the Juvenile Court Law.

B146672
(Los Angeles County
Super. Ct. No. CK 43080)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARNETTA W.,

Defendant and Appellant.

Appeal from an order of the Superior Court of Los Angeles County.

Jacqueline H. Lewis, Juvenile Court Referee. Affirmed.

Maria Garcia, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel and Arezoo Pichvai, Senior Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appeal from the order of the juvenile court declaring Robert C., Roderick C., and Shante W. wards of the court pursuant to Welfare and Institutions Code¹ section 300 subdivisions (a) (physical abuse),² (b) (failure to protect),³ (c) (emotional harm),⁴ and (i) (cruelty).⁵ Appellant, Marnetta W., mother of all three children contends there was not substantial evidence to support the juvenile court's findings and orders under Welfare and Institutions Code section 300, subdivisions (c) and (i). We find that substantial evidence supports court's findings under section 300, subdivisions (a) and (b) and therefore affirm the order of the juvenile court.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

² Section 300, subdivision (a): "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian."

³ Section 300, subdivision (b): "The child has suffered, or here is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability o his or her parent or guardian to adequately supervise or protect the child."

⁴ Section 300, subdivision (c) "The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care."

⁵ Section 300, subdivision (i) "The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty."

STATEMENT OF PROCEDURAL FACTS

Marnetta W. (“Appellant”), is the mother of Robert C., age 15, born in 1984; Roderick C., age 12, born in 1988; and Shante W., age 8, born in 1991 (hereinafter Robert, Roderick, and Shante, or collectively, (“the Minors”). On July 18, 2000, the Department of Children and Family Services (“DCFS”) detained the minors after allegations of physical and emotional abuse by Appellant and her then husband, Cedric W., father of Shante.

On July 21, 2000, DCFS filed a petition alleging that the minors were in danger of serious physical harm, that their mother failed to protect the minors from exposure to domestic violence, and that the minors were subject to acts of cruelty. The incidents of domestic violence were reported to have occurred between Appellant and Cedric W.

On September 22, 2000, DCFS filed a first amended petition pursuant to section 300, subdivisions (a), (b) and (i). The first amended petition repeated the same allegations as the original petition with the additional allegations that Cedric W. made terrorist threats against Marnetta W. and was incarcerated as a result. On September 22, 2000, the juvenile court dismissed DCFS’s original section 300 petition and deemed the first amended petition filed.

On September 25, 2000, DCFS filed a second amended petition. The second amended petition repeated the same charges with an additional allegation that father Robert C. failed to ensure that Robert and Roderick attended school regularly.

An adjudication hearing was held over six days: November 30, December 1, 4, 5, 13 and 14, 2000. The dispositional hearing was held on December 14, 2000. The juvenile court declared the minors dependents of the court under section 300, subdivisions (a), (b), (c) and (i). The juvenile court also found there was clear and convincing evidence pursuant to section 361, subdivision (c) that substantial danger existed to the physical and emotional well being of the minors and there were no reasonable means to protect them without removal from Marnetta W.’s physical custody. Robert, Roderick and Shante were placed with their paternal grandmother.

Reunification services were ordered for all parents. Marnetta W. was also ordered to participate in individual counseling and parenting classes. The individual counseling was to address issues of anger management, domestic violence and parenting. Marnetta W. was also ordered to submit to six random drug tests with the condition if she failed any tests she was to complete a drug rehabilitation program. Marnetta W. was given monitored visits with all three minors. The case was set for a contested section 366.21, subdivision (e) hearing on June 5, 2001.

On December 14, 2000, Marnetta W. filed a timely notice of appeal from the orders at the dispositional hearing.

STATEMENT OF FACTS

The minors were taken into protective custody on July 21, 2000, after reporting allegations of physical abuse and domestic violence to a neighbor. The report of the social worker detailed the allegations. Robert, age 15, reported that Appellant had kicked him in the torso area, she hit him with her fists and threw a crystal object at his back. Robert also reported that in February 2000, Appellant punished him by carving his initials on the back of his hands. Robert told the social worker that Appellant threatened to kill Robert or would hand him a knife and tell him to kill himself. Further, on two occasions, Appellant tried to suffocate Robert and Roderick by placing a pillow over their heads. Robert also reported witnessing Appellant hitting Cedric and attempting to stab him. Appellant also allegedly put sugar in Cedric's gasoline tank and slashed the tires of Cedric's car.

Roderick, age 12, told the social worker that Appellant had attempted to suffocate him when he was seven or eight years old. Roderick indicated that Appellant had hit him in the head with her fists, had thrown keys at him. He also witnessed Appellant attempt to stab Cedric on at least six occasions.

Shante, age eight, reported that Appellant called her a bitch, a tramp and a whore. Shante stated she witnessed Appellant's physical abuse of Robert and Roderick

and had heard Appellant request that Robert and Roderick kill themselves or that Appellant would kill them. Shante recalled a recent incident when Appellant demanded that Shante locate a hammer because she was going to swing the hammer at Robert. Shante indicated she was very fearful of Appellant as a result of the physical abuse.

Appellant was also interviewed by the social worker and she stated that all the statements made by the minors were false and the result of “brainwashing” by their maternal uncle. Cedric told the social worker that Appellant had stabbed him, but he did not remember how many times he had been stabbed. Cedric stated that he did not know about the physical abuse of the children, but did recall Appellant being upset about something and threatening to cut up the children and put them in the oven.

DCFS alleged Appellant failed to protect the minors from incidents of domestic violence or physical violence and that she exposed the minors to acts of cruelty based on the same allegations of domestic violence and abuse.

On July 21, 2000, the juvenile court held a detention hearing on the petition filed by the DCFS. The court found there was a prima facie case for detaining the children. Robert and Roderick were released to their paternal grandmother’s home and Shante was released to Cedric. The court ordered family reunification services for Appellant and ordered DCFS to provide her with low/no cost referrals. The court ordered monitored visits with Appellant and the children in a neutral setting.

A progress hearing was conducted on July 25, 2000. At the hearing the court ordered that the maternal uncle, Andre, have visits with the children if the visits could be monitored in the DCFS office.

On August 7, 2000, the social worker conducted further interviews. Robert stated that he had seen Appellant and Cedric argue and then saw Appellant stab Cedric in the shoulder. Regarding his own situation, Robert reported that Appellant had once tried to smother his face with a pillow stating that Appellant “was really mad. She tried to smother me 10 times. She hits me with extension cords and shoes. She hits us in the head with them and stuff.” Robert reported that Appellant once punished him by

carving his initials into his hands using a metal hangar. Robert reported that Shante was afraid of Appellant and Appellant had stated that she would cut Shante and “put her in the oven.”

Rodrick told a social worker that he had seen Appellant cut Cedric with a knife. He indicated he had seen her choke Robert with her hands and that she hits the minors with cords, hangers, and shoes. Rodrick reported that he seen Appellant hit Shante with an extension cord, her fist and hangers.

Shante stated that she had never seen Appellant and Cedric hit each other. She reported that Robert had told her about the smothering incident. Shante reported that Appellant had hit Robert and herself with an extension cord. Shante told the social worker that her mother had socked her in her ribs. Shante stated she wanted to go home only if her brothers went home as well.

In her interview, Appellant denied the physical abuse allegations. She stated that Robert made the allegations because he wanted to live with his father. Appellant indicated she would punish Robert by forcing him to write standards or restrict his use of video games. Stated she had not hit Robert and five or six years. Marnetta W. reported that the maternal uncle coerced the children to make up the allegations against her so that he could obtain custody of children and funds for their support. Appellant indicated that she had already enrolled in counseling and parenting classes. The social worker found Appellant to be cooperative and felt there was a good prognosis for Appellant to follow through with the court’s orders.

The social worker also interviewed Cedric, father of Shante. Cedric admitted that he used to hit Appellant, the stated that he stopped hitting Appellant in 1989 or 1990. Cedric reported that Robert and Shante were afraid of Appellant and Appellant would hit the children when her house was not clean.

On August 27, 2000, Dr. Michael Ward conducted a psychological evaluation of Appellant pursuant to Evidence Code section 730. Dr. Ward found that Appellant did not appear to have any overt, obvious psychiatric illness or disturbance. He felt the

allegations of the children were somewhat “far-fetched” because none of children had been observed with any marks or bruises. However he recommended that there is support for the allegations, “this is obviously very serious situation that will require some very intensive treatment” of Appellant.

An interim report prepared by DCFS on August 29, 2000, informed the court that Robert alleged Appellant had a drug problem. Social worker concluded however that there was no compelling evidence that Appellant had a drug problem and recommended family reunification services for Appellant.

On September 22, 2000, DCFS filed a first amended petition adding that on September 18, 2000, Cedric was arrested for terrorist threats and was incarcerated and unable to care for his daughter, Shante. Cedric had threatened to kill Appellant and was in violation of a restraining order against him to stay away from Appellant. The court dismissed the petition filed by DCFS on July 21, 2000 and ordered the first amended petition filed.

On September 25, 2000, DCFS filed a second amended petition adding that Robert and Roger’s father had failed to insure that children regularly attended school and that such acts by the father endangered the children’s physical health and safety. The court ordered the first amended petition filed on September 22, 2000, be dismissed and the second amended petition filed.

On October 27, 2000, Appellant successfully completed a 20-week parenting-counseling program at Toberman Settlement House.

The adjudication hearing was held over six days. All three minors testified at the dispositional hearing. Shante was found qualified to testify and gave her testimony in chambers. Shante testified her uncle made her lie and tell the social worker she was afraid of Appellant. Shante stated she was not actually afraid of Appellant. Shante stated Appellant spanked the minors and hit them in hand with a cord. Shante told the court that she did not “want to answer the questions for my mommy and my daddy.”

Shante declined to answer questions whether she saw Appellant hit Cedric and whether she had seen Appellant with a knife.

Shante testified that Appellant had hit her with a hanger and had hit all three children with an extension cord. She testified that she had heard Appellant threaten to kill Robert if he told about abuse. Shante testified she did not want her mother to get “a paper of what I said” because “she’s going to get mad.”

Shante also testified that Appellant used non-physical forms punishment on the minors such as having to stay in the house. Shante W. also testified that her father, Cedric told her lie because it would help him get out of jail. Shante said Appellant never asked her to the lie. Shante stated she never saw Cedric hit Appellant.

Roderick also testified at the dispositional hearings. He testified that Appellant never threatened to hurt him, Robert or Shante with a knife. Roderick testified that he never saw Appellant try to suffocate Robert with a pillow and that “my mom wouldn’t do nothing like that.” Roderick testified that he never saw marks on Robert’s hands. Roderick testified that Appellant hit him on the hand with an extension cord and hit him on the back with her hand. Roderick also testified that Appellant used other forms of punishment such as taking their games away, making them throw out the trash or restricting them from playing outside.

Roderick testified that he was not afraid of Appellant and wanted to go home with his mother. He stated that his uncle, Andre, told him to lie and say he was afraid of Appellant. He testified that he lied previously because he was afraid of his uncle. Roderick testified that although he had seen Appellant and Cedric argue, he had never seen them hit each other. Roderick denied seeing Appellant stab Cedric in the hand.

Robert testified that he wanted to return to Appellant’s home and that he had never told the social worker differently. Robert testified that he was not afraid of Appellant and denied that she tried to suffocate him with a pillow. Robert also testified that Marnetta W. would hit him with an extension cord, but that it was on his hand and

did not hurt. Robert testified that his punishments would consist of doing dishes, going to his room and having his video games taken away.

Robert admitted that he said he was afraid of Marnetta W. at the time of his removal so that he could live with his father, Robert C., Sr. Robert testified that he would feel safe living with Marnetta W. if Cedric was not in the home. Robert also testified that his maternal uncle told him to say that he was scared of Appellant and did not want to return to her home.

Appellant also testified at the hearings. She testified that the last incident between her and Cedric occurred when he followed her in her car leaving work. She also testified that Cedric forced her to drive to a motel and attempted to force her to have sex against her will. Marnetta W. called the police on her cellular phone and the police arrived and arrested Cedric.

Marnetta W. admitted that she used to spank the children, but had stopped because "that didn't work." In lieu of spanking she would have them write standards and take away their video game privileges. She admitted hitting the children on the hand with an extension cord during the early 1990's. She denied attempting to suffocate Robert with a pillow or carve initials into his hand. Marnetta W. denied that she ever threatened to hit, injure or kick any of the minors. She testified that none of the minors ever told her they were afraid of her. She stated that Robert previously wanted to live with his father, but his father failed to spend time with him.

The juvenile court made its findings on December 14, 2000, adding section 300, subdivision (c) to the petition. In making its findings, the court stated that it found Shante to be "extremely credible" in both the things she said and those she refused to say. Her testimony in connection with the information in the detention report and the jurisdictional report provided the court sufficient information to sustain the petition. The court specifically found Robert not to be credible and felt that all three children were afraid of saying things.

The court sustained the petition and declared the children to be dependents of the court under section 300, subdivisions (a), (b), (c) and (i). The court found by clear and convincing evidence that substantial danger existed to the children's physical and emotional health and there were no reasonable means to protect them without removal. The court ordered DCFS to provide family reunification services and ordered Appellant to participate in individual counseling to address issues of anger management, domestic violence and parenting.

CONTENTIONS

Marnetta W. challenges only the juvenile court's findings under section 300, subdivisions (c) (emotional harm) and (i) (cruelty). She concedes there is substantial evidence for the section 300, subdivision (a) and (b) findings, but contends "substantial prejudice against Marnetta W. will result in subsequent proceedings in this case if the section 300 (c) and (i) findings are allowed to remain." The resulting prejudice would be that if allowed to stand "[the findings] may have a detrimental effect on Marnetta W.'s ability to receive reunification services and to be granted visitation in subsequent proceedings"

In specific, Marnetta W. alleges "there was no evidence presented at the jurisdiction hearing that any of the minors were suffering or were at risk of suffering severe emotional damage" and "there was no substantial evidence that Marnetta subjected the minors to acts of cruelty." Appellant argues, "there were reasonable means to protect the minors short of their removal from Marnetta W.'s care. The minors could have remained with Marnetta W. without danger of emotional damage of physical abuse. Marnetta W. and the minors could have continued to receive reunification services without removing the minors from the family home."

Respondent contends that substantial evidence supports the trial court's jurisdictional findings. Respondent further argues that even if one or more of the trial court's jurisdictional findings were supported by the evidence, reversal is not required if

there were other, validly supported jurisdictional findings. (*In re Jonathan D.* (1992) 5 Cal.App.4th 873, 877.)

STANDARD OF REVIEW

“The petitioner in a dependency proceeding must prove by a preponderance of the evidence that a child who is the subject of the petition comes under the juvenile court’s jurisdiction.” (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859.) The standard of review of jurisdictional orders on appeal is the substantial evidence test. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) The appellate court determines if there is “any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from facts, the appellate court is without power to substitute its deductions for those of the trier of fact. [Citation.]” (*In re Katrina C.* (1998) 201 Cal.App.3d 540, 547.) The issue of credibility and the weight given a witness’s testimony is within discretion of the trier of fact. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

“We uphold judgments if they are correct for any reason, “regardless of the correctness of the grounds upon which the court reached its conclusion.” [Citation.] “It is judicial action and not judicial reasoning which is the subject of review” (*United Pacific Ins. Co. v. Hanover Ins. Co.* (1990) 217 Cal.App.3d 925, 933.) We will not reverse for error unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Daly v. General Motors Corp* (1978) 20 Cal.3d 725, 746.) Such is not the case here.” (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.)

DISCUSSION AND DISPOSITION

It is established that “the reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds: ‘Since the trial court had sufficient basis to terminate appellant’s parental rights under [Civil Code] section 232, subdivision (a)(6), its findings under subdivision (a)(7) are moot.’ (*In re Amie M.* (1986) 180 Cal.App.3d 668 676.)” (*In re Jonathan B.*, *supra*, 5 Cal.App.4th 873, 875.)

Given that Appellant in this case has declined to challenge the findings under subsections (a) and (b) and jurisdiction is therefore established under those subsections, we are not required to determine whether the findings under subsections (c) and (i) are correct. Once a legitimate basis for jurisdiction is established, either, as here, because unchallenged or because supported by substantial evidence, we do not need to consider the sufficiency of the evidence offered to support other basis. (*Randi R. v. The Superior Court of Orange* (1998) 64 Cal.App.4th 67, 73; *In re Jonathan B.*, *supra*, 5 Cal.App.4th at pp. 875-876; *In re Steven A.* (1991) 230 Cal.App.3d 349.)

Although not necessary, we would be willing to evaluate the sufficiency of the evidence on the subsection (c) and (i) allegations if the reunification services ordered for Appellant were specifically designed to redress a problem or issue arising from a finding which was not supported by substantial evidence. Such is not the case here. The reunification services ordered for the Appellant would be justified regardless of which subdivision of section 300 was found to be supported by the evidence.

We decline the opportunity to further evaluate Appellant’s contentions.

DISPOSITION

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

COOPER, J.^{*}

We concur:

BOREN P.J.

DOI TODD, J.

* Presiding Justice of the Court of Appeal, Second Appellate District, Division Eight, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.